STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2007-273

November 20, 2007

PUBLIC UTILITIES COMMISSION
Requirements for Eligible Telecommunications Carriers; Chapter 206

ORDER APPROVING RULE AND STATEMENT OF FACTUAL AND POLICY BASIS

ADAMS, Chairman; REISHUS and VAFIADES, Commissioners

I. SUMMARY

By way of this Order, the Maine Public Utilities Commission (Commission) adopts Chapter 206, Requirements for Eligible Telecommunications Carriers, which establishes procedures and standards for designating carriers as Eligible Telecommunications Carriers (ETCs) qualified to receive high-cost federal Universal Service Fund (USF) support.

II. PROCEDURAL BACKGROUND

The Telecommunications Act of 1996 (the TelAct) provides for the continuing support of universal service goals by making federal USF available to carriers designated as Eligible Telecommunications Carriers (ETCs). Pursuant to Section 214(e)(2) of the TelAct, state commissions are primarily responsible for designating carriers as ETCs. 47 U.S.C. § 214(e)(2).[1] To qualify as an ETC, a carrier must offer and advertise the availability of each of nine enumerated services[2] to all customers within its service area. 47 U.S.C. §214(e)(1); 47 C.F.R. § 54.101(a). Further, as a condition for continued receipt of federal USF support, a carrier must each year certify to this Commission that the funds it receives are being used in a manner consistent with the requirements of 47 U.S.C § 214(e) so that the Commission may, in turn, file with the

[1] *See also* Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12255, ¶ 93 (2000) (*Twelfth Report and Order*).

[2] The required services include: (1) voice grade access to the public switched network; (2) local usage; (3) Dual Tone Multifrequency (DTMF) signaling or its functional equivalent; (4) single-party service or its functional equivalent; (5) access to emergency services, including 911 and enhanced 911; (6) access to operator services; (7) access to interexchange services; (8) access to directory assistance; and (9) toll limitation for qualifying low-income customers. 47 C.F.R. § 54.101(a).

Federal Communications Commission (FCC) the annual certifications required by 47 C.F.R. §§ 54.313 and 54.314.

Although a state commission need not designate more that one carrier as an ETC in an area served by a rural telephone company, it may designate additional carriers if it first finds that such designation is in the public interest.[3] There is little guidance, however, within the TelAct regarding how state commissions should evaluate the "public interest" in such circumstances. Other state commissions have found that they should take into account the purposes of the Act and consider the relative benefits and burdens that an additional ETC designation would bring to consumers as a whole. *See, e.g., In the Matter of the Petition of RCC Minnesota, Inc. For Designation as an Eligible Telecommunications Carrier*, Wash. Utilities and Transportation Commission, Docket No UT-02033, Order (Aug 14, 2002) at ¶ 10.

The FCC has adopted standards that it will follow when it is called upon to consider an application brought by a carrier for ETC designation in a state which has not assumed jurisdiction over such applications. *See In the Matter of Federal-State Board on Universal Service*, CC Docket No. 96-45, Report and Order (March 17, 2005) ("ETC Order"). In its ETC Order, the FCC suggested, but did not require, that state commissions with jurisdiction to make ETC designations adopt the FCC's standards.

On October 11, 2006, we initiated an inquiry (Docket No. 2006-573) to obtain comments regarding whether and to what extent the Commission should adopt the FCC's recommended standards, or any other standards, for reviewing applications for ETC designation. After receiving and considering responses, we initiated Docket No. 2007-273, a rulemaking to develop Chapter 206, Requirements for Eligible Telecommunications Carriers. Chapter 206 establishes procedures and standards by which the Commission will designate a telecommunications carrier as an ETC and annually re-certify its ETC designation. The Commission sent notice of the inquiry and the rulemaking to all current ETCs, all local exchange carriers certificated in Maine, and to each of the parties in Docket Nos. 2002-344 and 2004-246, the two proceedings in which we designated as ETCs the wireless carriers RCC Minnesota and U.S Cellular, respectively. In response to the Notice of Rulemaking in this proceeding, we received comments from Verizon, the Telephone Association of Maine (TAM), and the Office of the Public Advocate (OPA) and consolidated comments from RCC Minnesota, Inc. (RCC)[4] and U.S. Cellular Corporation (U.S. Cellular), referred to as the wireless ETCs.

III. SUMMARY OF FCC STANDARDS

In our Notice of Rulemaking, we discussed each of the standards for ETC designation that the FCC recommended the states adopt in its 2005 ETC Order, and recommendations we received on whether the Commission should adopt those

[3] 47 U.S.C. § 214(e)(2).

[4] RCC Minnesota conducts its business in Maine under the name Unicel.

standards in whole or in part. In addition, we discussed other ETC designation standards which we preliminarily concluded the Commission should adopt in addition to or in lieu of the FCC recommendations. The following is a discussion of the FCC's recommended standards for ETC designation.

A. Commitment and Ability to Provide Services

When the FCC reviews an application by a provider for designation as an ETC, it requires that the applicant demonstrate its commitment and ability to provide supported services throughout its designated service area to all customers who make a reasonable request for service. *See* ETC Order at ¶ 21. The applicant must also submit a formal plan detailing how it will use federal high-cost universal service support to improve service within the service territory for which it seeks designation. *Id.* at ¶¶ 22-23. Specifically, the applicant must provide a five-year plan describing with specificity its proposed improvements or upgrades to its network on a wire center by wire center basis throughout its designated service area. The plan must demonstrate in detail how the USF support will be used for service improvements that would not occur without receipt of the support. If an applicant believes that service improvements are not needed in a particular wire center, it must explain the basis for this determination and explain how funding will otherwise be used to further the provision of supported services in that area. In connection with its annual reporting requirements, the ETC must report on its five-year service quality plan by submitting coverage maps detailing its progress towards meeting its target, and it must describe the amount of high-cost support that it received and how the money was used to improve its signal quality, coverage, and capacity, with detailed information for each wire center for which USF support was received. In addition, the applicant must submit a detailed explanation regarding service improvement targets that were not met.

B. Ability to Remain Functional in Emergency Situations

Pursuant to the FCC's standards, an ETC applicant must demonstrate that it: 1) has adequate back up power available to ensure the continued functioning of its system even when external power is unavailable; 2) is able to reroute traffic around damaged facilities; and 3) is capable of managing traffic spikes resulting from emergency situations. *See* ETC Order at ¶ 25. The FCC declined to adopt a specific benchmark requiring that an ETC maintain eight hours of back up power and ability to reroute traffic to other cell sites in emergency situations. According to the FCC, an extreme or unprecedented emergency may render the ETC inoperable in spite of reasonable precautions taken prior to the occurrence of the emergency. Nonetheless, the FCC suggested that, as most emergency situations are local in nature, that state commissions identify geographically-specific factors that are relevant for consideration of an emergency functionality requirement for ETCs. *Id.* at ¶¶ 25-27.

C. Consumer Protection

The FCC found that an ETC applicant must make a specific commitment to objective measures to protect consumers. *See* ETC Order at ¶ 28. The FCC determined that a wireless carrier applying for ETC status will meet the consumer

protection requirement if it agrees to comply with the Cellular Telecommunications and Internet Association's (CTIA) Consumer Code for Wireless Service. The FCC indicated that it would consider the sufficiency of other commitments on a case-by-case basis. It declined to adopt additional consumer protection measures, including any state-specific requirements, which might require the FCC to interpret state statutes and rules. *Id.* at ¶¶ 28-31.

Several commenters to the FCC asserted that an ETC, including a wireless ETC, should be required to submit to the same state laws concerning consumer protection that the ILECs must follow, including those related to such matters as billing, collection and mediation obligations. *Id.* at ¶ 30. In determining whether any additional consumer protection requirements should apply as a prerequisite for obtaining ETC designation from a state commission, the FCC urged that state commissions consider the extent to which a particular regulation is necessary to protect consumers in the ETC context, as well as the extent to which it may disadvantage an ETC specifically because it is not an ILEC. Thus, the FCC agreed with the Joint Board that "states should not require regulatory parity for parity's sake." *Id.*

D. Local Usage

When the FCC reviews an application for ETC designation, it requires that the applicant demonstrate that it offers a local usage plan that is comparable to the one offered by the ILEC, but the FCC declined to adopt specific requirements for such a plan. *See* ETC Order at ¶ 32. Rather, the FCC stated that it would review the applicant's local usage plans on a case-by-case basis. In its Order, the FCC provided examples of the types of local usage plans that might satisfy the requirement. *Id.* at ¶¶ 32-34.

E. Equal Access

The FCC did not adopt a general equal access requirement for ETC applicants, but it does require applicants to acknowledge that they may be required to provide equal access to long distance carriers in the event that all other ETCs in their service area relinquish their designations and no other ETC is providing equal access in that service area. *See* ETC Order at ¶ 35. If a carrier requests to relinquish its ETC designation, the FCC must determine if customers of the relinquishing carrier will be served by the remaining ETC or ETCs, and in the process the FCC will examine the necessity of requiring the remaining ETCs to provide equal access. *Id.* at ¶ 36. ILECs already have the obligation to provide equal access as part of their wireline service. There might, however, be circumstances in which this the FCC could find that a wireless carrier designated as an ETC was providing basic service and should be required to provide equal access.

F. Public Interest Determination

The FCC has decided not to adopt any specific criteria for an ETC applicant to demonstrate that its designation is consistent with the public interest, convenience and necessity. *See* ETC Order at ¶ 41. Rather, the FCC indicated it will

perform a fact-specific analysis to determine whether the public interest standard is met. It will consider a variety of factors in its overall analysis, including increased consumer choice and the unique advantages of the competitor's service offering. *Id.* at ¶ 44. In areas where the applicant seeks designation below the study area level of a rural telephone company, the FCC will conduct a "cream skimming" analysis that compares the population density of each wire center in which the applicant seeks designation with the density of the wire centers in which designation is not sought. *Id.* at ¶¶ 48-53. If the potential for cream skimming is found to exist, the FCC will deny the application if the potential is found to be contrary to the public interest. This analysis will be conducted only in rural study areas, because the same potential does not exist in areas served by non-rural ILECs.[5]

The FCC has declined to adopt a specific test for considering whether the designation of an ETC will affect the size and sustainability of the high-cost fund on the grounds that the impact of any one ETC on the overall fund would be negligible. The FCC did indicate, however, that state commissions may consider the level of per-line high-cost support as a factor in its public interest analysis. If the state believes that the level of per-line support is already high enough, it may be justified in limiting the number of ETCs in a particular study area. The FCC declined to establish a specific national per-line benchmark for designating ETCs, and stated that other factors need to be considered in conducting the analysis. Similarly, the FCC declined to impose a limit of one wireline ETC and one wireless ETC in each service area.

IV. OVERARCHING PRINCIPLES

In examining the comments we received and considering the appropriate approaches for attaining the goals of this rule, we face the conundrum that wireless and wireline ETCs operate under very different circumstances.[6] The two industries use

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[5] The analysis employed by the FCC in assessing whether an ETC designation is in the public interest when a carrier proposes to serve an area below the study area level of an ILEC, in both the rural and non-rural context, has undergone significant modification over the years. This evolution is traced by the FCC's Orders in *RCC Holdings Petition for Designation as an Eligible Telecommunications Carrier Throughout its License Service Area In the State of Alabama*, CC Docket No. 96-45, 17 FCC Rcd at 23547; *Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 03-0338 (rel. Jan. 22, 2004).; and *Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 04-37 (rel. April 12, 2004).

[6] Among wireline carriers, ILECs and wireline CLECs also exhibit different characteristics that are relevant to our decisions. Currently, no CLECs have petitioned to become ETCs. Thus, most of the discussion in our Order compares ILECs and wireless ETCs. However, the rule provides for the possibility that a CLEC may petition to become an ETC.

different technologies, their markets are in different stages of development, customers' expectations of their services may differ, and they use federal USF funds for different purposes. Since our goal is to make the best use of federal USF funding by *all* carriers who receive it, these differences significantly affect every decision we must make. Indeed, it is virtually impossible to treat all carriers similarly and still make the best use of the funding. Commenters in our rulemaking point out such differences, arguing in some situations that the two types of carriers should be treated differently. "Parity for parity's sake" is cited as an outcome to be avoided. On the other hand, commenters argue in other situations that the two types of carriers should be treated in a similar manner, in order to avoid overly burdensome and thus inequitable requirements for one group of carriers over the other. Thus, the commenters themselves struggle with the same conundrum that we do.

In its comments, TAM notes that its members have been ETCs for many years, and have been using federal USF funds to maintain universal service by reducing rates in high cost areas of Maine. TAM further states that its members are rate-of-return regulated, with reporting requirements adequate to ensure that carriers are using USF funds appropriately. TAM asserts that the entire rule should be applicable only to CETCs. Verizon's comments echo TAM's, stating that "the proposed rules should be modified to distinguish between new, competitive ETCs on the one hand, which may be in the process of building out new networks and services that generally are not subject to Commission oversight and regulation, and the incumbent LECs on the other, that have provided service for decades subject to direct Commission regulation."

For many reasons, we do not believe that imposing identical requirements on wireline and wireless carriers is the most effective way to ensure that federal funds are used for the benefit of Maine's telephone users. We concur that parity for parity's sake is a meaningless, and indeed a detrimental goal . However, we recognize that inconsistent requirements create the specter of inequitable treatment among competitors. In our final rule, we strive to provide requirements that are relevant to each industry, while treating competing carriers as equitably as possible.

First, we concur with TAM and Verizon that ILECs are subject to Commission rules and orders designed to ensure that carriers expend funds (whether ratepayer or USF) prudently, provide appropriate consumer protections, and conform to any other requirements the Commission considers to be necessary to provide universal service pursuant to Maine law. Chapter 206 should not duplicate requirements that already exist or impose senseless reporting requirements. This conclusion leads us to remove from the final rule all terms that would have been redundant for, or applied unnecessarily to, ILECs.

Similarly, we see no reason to impose consumer protections or reporting requirements on wireless ETCs that are irrelevant to their service, simply because ILECs must comply with those requirements. Given the lack of existing Commission oversight of wireless ETCs, the rule should introduce requirements that allow us to determine that federal USF funds are being used in the manner required by federal regulations; it should not introduce requirements that extend beyond that goal. Furthermore, we find that the goal we strive to attain is the introduction of telephone

services to persons who, because they live in rural areas, have relatively fewer options than their neighbors in more urban areas. We do not attempt to require this service to be identical to basic landline service. We require that rural consumers know what they are purchasing and be treated fairly by their carrier. Thus, the final rule generally imposes on wireless ETCs (and sometimes CLECs) consumer protection requirements that are less stringent than ILECs' requirements and investment reporting requirements that are more stringent. In either event, we focus on whether the requirement is useful or necessary to ensure that USF funds are used to provide service in the manner required by law and that customers understand what they are purchasing and are treated fairly.

V. SUMMARY OF THE FINAL RULE

The comments generated in response to our Inquiry and our Notice of Rulemaking were helpful to the Commission in developing the final rule. In the following sections, we set forth each section of the rule and discuss comments we received during the rulemaking and, when helpful to our discussion, the Inquiry. We also explain the rationales for our decisions in adopting each section of the final rule.

A. Purpose (Section 1)

Section 1 of the rule sets forth the general purpose of the rule, which is to establish the standards that the Commission will apply in its consideration of new applications by telecommunications providers for designation as an ETC, and in its annual certification to the FCC for previously designated ETCs. As the statement of purpose explains, designation as an ETC permits a provider to receive federal Universal Service Fund (USF) support. No commenters objected to this section, and it remains unchanged in the final rule.

B. Definitions (Section 2)

Section 2 of the rule sets forth the definitions of pertinent terms used throughout the rule. Many are self-evident and are unchanged in the final rule.

The term "facilities," as it is used in Section 3 of the rule, refers to all components of the telecommunications network that are used in providing the services that are supported by the USF. The wireless ETCs comment that the definition in the proposed rule should be broadened, to account for components beyond "transmission or routing." They also suggest removing the modifier "physical." We agree that "facilities" refer to all components involved in providing telephone service, and have made these revisions in the final rule.

The term "telecommunications provider" refers to any provider of communications transmission by telephone whether or not those communications are transmitted over wires. We have added two definitions in the final rule, made necessary by changes related to the differing treatment of ETCs that are Incumbent Local Exchange Carriers (ILECs) and ETCs that are not ILECs (Competitive ETCs or CETCs).

CETCs include both wireline and wireless ETCs, although at this time in Maine no competitive wireline carrier has applied for ETC status.

C. Contents of Petition by Applicant (Section 3)

Section 3 of the rule sets forth the requirements that must be satisfied by a provider seeking designation as an ETC by the Commission. These requirements are both ministerial (in terms of what must be included in the actual application petition) and substantive (in that they establish the obligations and commitments that an applicant must make in order to be designated as an ETC).

Consistent with the overarching principles discussed in Section IV of this Order, we have revised Section 3 of the rule to make Section 3's requirements applicable only to CETCs. Currently, all Maine's ILECs are already ETCs, and there is virtually no likelihood that a new ILEC will be created in Maine. Thus, Section 3 need be applicable only to CLECs and wireless carriers.[7]

There are nine general proposed requirements, denominated by the letters A-I, as follows:

1. Description of Service Area for CETC designation (Section 3(A))

Section 3(A)(1) requires that a CETC applicant describe in its application the particular area or areas for which it seeks designation as an ETC. The description of the relevant area will enable the Commission, should it approve the application, to designate the "service area" of the CETC, as that term as defined by the Telecommunications Act of 1996, 47 U.S.C. § 214(e)(5).

Section 3(A)(2) requires that a CETC applicant include in its application a statement that it will offer the services supported by federal universal service support throughout the area for which it seeks designation, either using its own facilities or a combination of its own facilities and resale of another carrier's. This requirement tracks the language of a mandatory requirement set forth in the Telecommunications Act of 1996, 47 U.S.C. § 214(e)(1)(A).

No commenters objected to this section and it remains unchanged in the final rule.

2. Timeframes for the Provision of Supported Service (Section 3(B))

Section 3(B) adopts the FCC's suggestion, as set forth in its ETC Order, that state commissions require an ETC applicant to commit to providing service

[7] Should a new carrier become an ILEC pursuant to 47 U.S.C. § 251(h)(2), Maine law and Commission rules and orders would dictate the process and requirements applicable to the ILEC.

throughout its proposed designated service area to all customers making a reasonable request for service. This language tracks that of 47 C.R.F. § 54.202. It would require a statement by an applicant certifying that it will: (1) provide service on a timely basis to requesting customers within the applicant's service area where the applicant's network already passes the potential customer's premises and (2) provide service within a reasonable period of time, if the potential customer is within the applicant's service area but outside its existing network coverage, if service can be provided at reasonable cost by:

a. modifying or replacing the requesting customer's equipment;
b. deploying a roof-mounted antenna or other equipment;
c. adjusting the nearest cell tower;
d. adjusting network or customer facilities;
e. reselling services from another carrier's facilities to provide service; or
f. employing, leasing or constructing an additional cell site, cell extender, repeater, or other similar equipment.

No commenters objected to this section and it remains unchanged in the final rule except for a nonsubstantive format and wording revision.

3. Benefit to Consumers and Infrastructure Improvement Plan (Section 3(C))

In our Notice of Rulemaking, we noted that while adoption of the 5-year FCC requirement would allow this Commission to track the use of USF support dollars, expansion plans beyond 2 years would likely be somewhat speculative and subject to modification as priorities and technologies change. It was our understanding that even a 2-year plan would be subject to revision and indeed our experience with existing wireless ETCs' plans confirms this understanding. Thus, in the proposed rule, we specified that an applicant must describe with specificity, for the first 2 years, the proposed network improvements it would carry out with federal funds. However, for the last 3 years of the 5-year plan, the applicant would submit as complete a description of its anticipated buildout and network improvement plan as currently exists for corporate planning purposes.[8] The written plan must demonstrate, during the first 2 years, how signal quality, coverage or capacity will improve due to the receipt of USF support; the projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by USF support; the specific geographic areas where the improvements will be made; and the estimated population that will be served as a result of the improvements. We commented that these modifications of the FCC's proposed infrastructure planning requirement are, in our view, sufficient to satisfy both the need for accurate information regarding the projects for which USF support will be used, and to establish a measurable, verifiable commitment on the part of the ETC.

[8] Wireless ETCs note that the later-year plans may be virtually nonexistent.

In their comments, the wireless ETCs reiterate their opposition, made in the Inquiry, to requiring a "goals statement" or other plan for years 3, 4 and 5 of a filed plan, even subject to modification. These companies assert that the wireless carriers have young networks and rapid growth, that market conditions and technologies change, and that support levels vary, resulting in the need to change plans regularly. They contend that "any plan beyond 24 months is little more than a guess." They repeat their suggestion made in the Inquiry that the Commission adopt a 2-year service quality improvement plan that is reported annually on a rolling basis, and remind us that ETCs must certify to the FCC that funds are used appropriately. We clearly recognize that a competitive ETC's plans are subject to regular change. Nonetheless, it is incumbent upon us to have the most effective means that can practicably be implemented for considering whether federal USF funds are used for purposes for which they are intended. As we discuss below, we have rejected the suggestion that we perform a detailed analysis of carriers' capital. We do not intend to weaken the proposed rule by rejecting a requirement for filings that provide us with locations and potential costs – no matter how speculative – associated with planned projects. In our view, the level of specificity required by the final rule strikes a balance between overly burdensome or potentially meaningless regulation and reasonable oversight of the public's money.

When developing this section of the proposed rule, we considered the concern that a reporting requirement that simply requires an ETC to describe its expenditures and its plans might be insufficient to demonstrate that such expenditures would not have been made without the availability of USF support. In its comments in the Inquiry, the OPA suggested that the Commission should develop a detailed test to ensure that USF funds are used only for incremental investment, possibly including an "analysis of the return on investments expected from projects associated with USF support and comparisons of normal capital budgets in years without support with those capital budgets for years that include USF support." In developing the proposed rule, we rejected this suggestion. We were inclined to agree with the comments made in the Inquiry by the wireless ETCs, that it would be nearly impossible to establish a "baseline" for annual network expenditures net of USF support in light of the dramatic variations in capital expenditures experienced by competitive telecommunications firms from year to year. We further stated that we were not prepared to assume that a carrier would falsely certify in its required filing to the FCC that its use of USF support is proper under federal law.

In its comments, the OPA reiterates that the rule should contain some means to ensure that ETCs use federal USF support for incremental service availability that would not have been provided absent the support. The OPA suggests that the Commission use its discretion regarding the best means for accomplishing such an analysis. We agree that abuse of federal USF support is undesirable and unconscionable. We continue to believe, however, that scrutiny of capital budgets or other means of which we are aware for determining baseline and incremental projects would not be a particularly effective way to protect consumers, if indeed we even have

the expertise to do so.[9] In addition, we take the view that "second guessing" a competitive company's actions generally is not effective. Putting in place a reporting requirement that includes certification by the carrier that it will use (or has used) its funds for the purposes for which they are intended and requiring project by project specificity seems to us to appropriately balance the Commission's role with that of the business. In addition, with these concerns in mind, we have added Section 3(J) to the final rule, which explicitly authorizes the Commission to require the applicant to provide additional information. We would use this authority to pursue any concerns raised by the response to Section 3(C) or any other portions of an application.

As discussed generally in Section IV, we also considered more specifically whether a requirement that network improvement and expansion plans filed with Commission should be applicable to all ETCs or only to competitive ETCs . By virtue of their long-standing landline service to customers throughout Maine, ILECs' infrastructure buildout is essentially complete. By comparison, CETCs use USF funds to construct or improve facilities in order to expand coverage in areas where it is limited. In our proposed rule, the filing requirement for written infrastructure improvement plans applied to all ETCs, but Section 3(C)(2) allowed an ILEC to submit an explanation of why USF support was not necessary to support infrastructure improvement.

Verizon and TAM (in its comments in the Inquiry, which it incorporates into the rulemaking) state that imposing the requirement to submit a 5-year buildout and improvement plan makes no sense for the ILECs, since the ILECs are not using USF support to enhance network infrastructure. Verizon comments that it passes its USF funds to customers through a monthly credit to customer bills. We conclude that it is indeed pointless to require a filing that satisfies no practical purpose. Furthermore, no ILEC will carry out the terms of Section 3(C)(1) of the rule, because all ILECs are already granted ETC status. Thus, we have deleted Section 3(C)(2) in the final rule.

The wireless ETCs further recommend revisions to the proposed rule that would confer confidential treatment to aspects of their 5-year plans that these companies consider to be commercially sensitive. In particular, the wireless ETCs consider the projected start date and completion date for each specific improvement, the estimated amount of investment for each project, and the specific geographic areas where improvements will be made to be competitively sensitive. Our authority to grant confidential treatment to submitted information rests in 35-A M.R.S.A. § 1311-A (for sensitive business information) and § 1311-B (for critical infrastructure information). While the wireless ETCs' concerns regarding the public dissemination of sensitive business or critical infrastructure information appears genuine (although not comprehensively supported by specific factual data submitted in the course of this proceeding), the statutory process for protecting information as confidential generally

[9] During the public hearing on the proposed rule, we explored the impact that regional investment planning has on Maine spending, as well as our ability to judge whether a project could have been done at lower cost.

precludes the sort of blanket finding of confidentiality by rule advocated by the wireless ETCs. Therefore the final rule does not confer broad confidentiality as requested by the wireless ETCs but, instead, describes the steps which an ETC applicant may take to petition the Commission, at the time of filing, for a protective order pursuant to § 1311-A or § 1311-B.

Finally, our proposed rule required that all ETC applicants submit network improvement plans on a wire center-by-wire center basis or throughout their designated service area. The wireless ETCs propose deleting references to "wire centers" throughout this section, asserting that wireless ETCs do not plan on the basis of an ILEC's wire center territory. We received no comments discussing the advantage of this terminology and we see no significant advantage to requiring wireless carriers to disaggregate their planning data based on wire center geography, so we have removed the term from the final rule.

4. Availability of Supported Services, Lifeline, and Link-Up (Section 3(D))

Section 3(D) requires that an ETC applicant include in its application a statement acknowledging its obligation to advertise, in a fashion reasonably calculated to reach low-income consumers not otherwise receiving discounts, the availability of all services supported by federal universal support mechanisms, including applicable telephone assistance programs such as Lifeline and Link-up. The obligation of an ETC to advertise the availability of supported services in media of general distribution is a mandatory requirement set forth in the Telecommunications Act of 1996, 47 U.S.C. § 214(e)(1)(B).

No commenters objected to this section and it remains unchanged in the final rule except for a nonsubstantive format revision.

5. Service Area Maps (Section 3(E))

Section 3(E) of our proposed rule required that any wireless provider seeking designation as an ETC supply with its application a map of its proposed service area showing the existing and planned locations of cell sites. The map would include shading to indicate where the applicant is currently providing commercial mobile radio service signals and where it plans to provide signals. It would also provide shading to indicate the signal strength of each existing and proposed cell site. Finally, this section of the proposed rule required that the data files containing the map be in .shp format so that the files can be opened by the computer application ArcGIS.

We proposed this mapping requirement for wireless ETCs because we believe that detailed information regarding wireless coverage is critical to the Commission's ability to evaluate a wireless ETC's 2-year wireless infrastructure improvement plans and its progress in expanding coverage throughout its service area. The availability of robust coverage maps would thus contribute to the Commission's ability to help advance goals of the federal universal service statute, 47 U.S.C. § 214(e),

and of the State's telecommunications policy as expressed by the Legislature in 35-A M.R.S.A. § 7101 ("modern state-of-the-art telecommunications network is essential for the economic health and vitality of the State and for improvement in the quality of life for all Maine citizens").

The wireless ETCs urge that the Commission differentiate between competitively sensitive information (in particular planned cell site locations) that it claims could compromise its ability to operate effectively in the market. They assert that they are willing to provide maps to the Commission of the type that the Commission needs for its own purposes. Consistent with common Commission practice, the wireless ETCs believe it is reasonable to provide these confidential maps to the OPA and to interveners in proceedings initiated by a wireless ETC. They suggest that maps that are available to the public contain only existing coverage areas.

The wireless ETCs recommend that the public be provided with maps that show the "coverage provided by the petitioner's customers." In response to the Commission's interest, discussed at the technical conference, to make consumers aware of the coverage of a wireless ETC's roaming territory, the wireless ETCs are willing to agree to provide public maps containing roaming coverage to the extent that a wireless ETC is able to secure this information from its roaming partner.

The OPA urges that publicly available maps be "as detailed as possible subject to the latest available data and technical feasibility, and relevant to each service plan being sold." The OPA points to language in the Assurance of Voluntary Compliance (AVC),[10] which aims to ensure that maps are as accurate and technologically advanced as practicable. We generally agree with the goal of the OPA's suggestion. As we have made clear during the public hearing and in other venues, we believe that consumers in Maine would be well-served by more accurate and granular information about their wireless coverage. Indeed, we continue to be surprised that wireless carriers do not publicly display maps of signal strength as a marketing tool. Over time, we will continue to urge public dissemination of such maps.

The OPA also urges that detailed maps be prominently available on the ETC's web site, available at retail stores, and available by mail. The CTIA Consumer Code requires that coverage maps be available on web pages and at point of sale. We are inclined to agree that availability through mail, upon request, is a reasonable requirement. As described in Section V(C)(7) below, we will require wireless ETCs to comply with the CTIA Code. Thus, in the interest of consistency and simplicity of consumer protections requirements, we do not add this requirement to the final rule.

We recognize that granting confidentiality to some portions of infrastructure maps would be consistent with other rules that we or other authorities have adopted. For example, Chapter 140, Utility Service Area and Infrastructure Maps

[10] The AVC will be discussed in more depth later in this Order.

(which is not applicable to wireless carriers) treats as confidential utilities' infrastructure maps. Chapter 101 of the Connect Maine Authority's rules confers confidential treatment mobile communications service providers' maps, which contain the location of cell sites and depiction of signal strength. As discussed in more detail in Section 5(C)(3) above, our authority to grant confidential treatment to submitted information rests in 35-A M.R.S.A. § 1311-A and § 1311-B, and the statutory process for protecting information as confidential generally precludes the sort of blanket finding of confidentiality by rule advocated by the wireless ETCs. Therefore, consistent with the requirements of Section 3(C), the final rule does not confer broad confidentiality as requested by the wireless ETCs but, instead, describes the steps which an ETC applicant may take to petition the Commission, at the time of filing, for a protective order pursuant to § 1311-A or § 1311-B.

The CTIA code contains language that, while more general than that proposed by the OPA, nonetheless specifies that maps must be generated using "generally accepted methodologies and standards." As will be discussed in Section V(C)(7) below, the final rule requires wireless ETCs' actions to comply with the CTIA Code, and the CTIA terms regarding map contents seems a reasonable standard to us. Thus, the final rule requires that wireless carriers provide to the public maps that conform to the CTIA standards.

Finally, the wireless ETCs, following up on discussions at the technical conference, suggest that the final rule avoid specifying specific technical specifications contained in the proposed rule, and instead direct the Director of Finance to annually establish the mapping technical requirements. We recognize that this approach will allow flexibility and growth to accommodate common industry practices and carriers' capabilities. However, we are concerned that introducing this directive will simply put off for another day a time-consuming argument over mapping protocols. Accordingly, we considered the rule's technical requirements. First, the proposed rule required that the maps be in .SHP format. The Commission requires and routinely receives maps in .SHP format, and it is a standard format accommodated by mapping software today. Thus we retain that requirement explicitly in the final rule. Second, the proposed rule required that the maps have "shading to indicate the signal strength of each such cell site**."** Monitoring signal strength (as opposed to simply coverage area) is critical to our ability to judge the extent to which wireless coverage is reaching rural locations in Maine, and we will not remove means to attain that capability. However, the final rule allows carriers more flexibility to produce that information, by expanding the allowable forms that we would allow for depicting signal strength to include the specifications contained in Chapter 101.[11] We note that a wireless carrier could request a waiver of these requirements, although we do not expect this to be necessary.

[11] Submittal of a map to the ConnectME Authority is voluntary for wireless carriers. However, all wireless carriers submitted maps with the specifications contained in Chapter 101 during the State's investigations leading up to the creation of the ConnectME program.

Finally, although we received no comments on the application of the mapping requirements to CLECs, we note that Chapter 140 of the Commission's rules require that CLECs that are ETCs must submit infrastructure maps pursuant to Chapter 140 requirements, so we will receive adequate coverage information through that process. We also make the minor revision suggested by the wireless ETCs that clarifies that Section 3(E)(1) refers only to projects occurring in Maine.

6. Ability to Remain Functional in an Emergency and Outage Reporting (Section 3(F))

Section 3(F)(1) of our proposed rule adopted the FCC's recommended requirement that an ETC applicant include in its application sufficient information to demonstrate that its network will remain functional in an emergency, and required that an applicant demonstrate that it has a source of back up power to ensure continuous functionality throughout its network in an emergency where commercial power is not available, that it is able to reroute traffic around damaged facilities, and that it is capable of managing traffic spikes resulting from emergency situations. The provision included specific requirements that a wireless carrier demonstrate it has at least four hours of back up battery power at each cell site, back up generators at each microwave hub, and at least five hours back up battery power and back up generators at each switch. It was our view that, to the extent that specificity is included in the rule, we might avoid protracted discussions when we consider applications and annual re-certifications.

In their comments, the wireless ETCs urge the Commission to remove the specific timeframes established for back up battery power and generators at cell sites, microwave hubs, and switches. The wireless ETCs assert that such requirements are currently addressed in a rule, recently adopted by the FCC, that adopts certain recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks.[12] They note that portions of the FCC rule are under reconsideration at the FCC.

Emergency capability is a topic of serious concern to the Commission. It remains our preference to include sufficient specificity to avoid annual judgments based on case-by-case filings. However, we agree that the FCC rule and subsequent decisions will likely determine specific back up requirements for cellular and landline ETCs, and our rule should not establish any irreconcilable conflicts with the federal rule. With this in mind, we replace the portion of the proposed rule that establishes specific time periods for back up capability with the requirement that CETCs comply with any federal or state requirements that exist, and to assert their ability and intention to comply with any such requirements that may be enacted from time to time.

[12] *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks,* EB Docket No. 06-119, WC Docket No. 06-63, *Order*, FCC 07-107, released June 8, 2007.

The Commission has other means for specifying back up or emergency requirements for ILECs, and will do so if necessary.

Section 3(F)(2) of our proposed rule required that an applicant commit to compliance with the outage reporting requirements set forth in the Commission's Chapter 200 rules.[13] Our Chapter 200 rule, presently the subject of proposed revisions, is intended to maintain a flow of information between telecommunications providers, other utilities, customers, and the Commission regarding service outages. In their comments, the wireless ETCs re-asserted their suggestion, made in the Chapter 200 rulemaking, that the Commission adopt existing FCC reporting requirements rather than develop new ones. We will decide upon that suggestion in our Chapter 200 rulemaking.

We originally intended, in the proposed rule, to require that all CETCs comply with the requirements of Chapter 200 even if, within Chapter 200, the requirements are applicable only to ILECs. This approach would have assumed that carriers receiving federal USF funding should be held to a higher reporting standard than other CLECs and wireless providers. In light of the overarching principles we expressed above in Section IV and the decisions we have made in developing the final rule, we no longer are of the view that there exists a basis upon which to require a higher reporting standard for a carrier merely because it receives federal USF funds.[14] We have authority to revise this rule or Chapter 200 in the future, and will do so if it seems useful. For now, we have removed the reference to Chapter 200 from the final rule.

7. Compliance with Chapter 290 and Chapter 294 Requirements (Section 3(G))

Section 3(G) of our proposed rule required that an ETC applicant commit to comply with the consumer standards set forth in Chapter 290 and Chapter 294 of the Commission's rules, except that a wireless provider would be excused from compliance with the rules of Chapter 290 provided that it complied with the consumer standards set forth in the Cellular Telecommunications and Internet Association's (CTIA Code) Consumer Code for Wireless Service and the Assurance of Voluntary

[13] We have opened a separate rulemaking proceeding to amend Chapter 200. See *Notice of Rulemaking, Amendment to Chapter 200 Telecommunications Carriers Reporting Requirements for Service Interruptions*, Docket No. 2007-230 (May 10, 2007) and the renotice in that proceeding on October 29, 2007.

[14] To determine whether an ETC is providing coverage to areas with otherwise limited coverage, it is valid for us to obtain information regarding reliability of coverage. In that regard, the extent to which a carrier experiences significant outages could be relevant to our determination. However, wireless carriers' reliability bears a much greater relationship with signal strength, which we obtain through the maps required by the final rule.

Compliance (AVC) entered into by the Attorneys General of 32 states and Cingular, Sprint, and Verizon Wireless in 2004. Chapter 290 establishes consumer protections associated with "local exchange service," and was adopted when only ILECs provided such service. Chapter 294 establishes Lifeline and Link-Up obligations, which aid low-income consumers to obtain basic service that they might otherwise be unable to afford.

In the Notice of Rulemaking, we commented that wireless telephone service does not fit the "basic local service" paradigm because the service does not typically differentiate between local and toll calls for billing purposes. For example, a wireless calling plan that provides 300 minutes of use costs the same regardless of whether the customer places calls to a neighbor across the street or to a relative living in another state. It was our preliminary opinion that mandating the creation of an artificial "local only" service to comport with the terms of Chapter 290 would not materially benefit consumers and that attaining regulatory parity did not necessarily require compliance by wireless providers with consumer standards that were designed for a wireline world. Indeed, we expressed the preliminary opinion that, if steps were taken to develop competitive markets, the level of regulation of all carriers, including ILECs, could be lowered.

With these factors in mind, we suggested that appropriate customer protections could be assured by mandating that wireless ETCs comply with the standards set forth in the CTIA and AVC consumer codes. These codes were developed to address specific practices of wireless providers and the unique vulnerabilities of their customers. For instance, the CTIA Code provides that wireless providers will make available to customers information regarding the calling area of their plans, the monthly access fee or base charge, the number of airtime minutes included in the plan, any nights and weekend minutes included in the plan or other differing charges based on when a call is placed, per-minute long distance charges and an indication of whether long distance is included in other rates, per-minute roaming or off-network charges, whether additional taxes, fees or surcharges apply and the amount or range of such fees that are collected and retained by the provider, whether a fixed-term contract is required, the amount of any activation fee, and the amount of any early termination fee and the trial period during which no such fee will apply. *See* CTIA Consumer Code at http://files.ctia.org/pdf/ConsumerCode.pdf. The Code also provides that wireless carriers will make reasonably updated coverage maps available to their customers, will provide or confirm the material terms and conditions of service with a subscriber, and will inform customers that a period of not less than 14 days will by allowed for the customer to try out and terminate service without the imposition of a termination penalty. Further, the CITA Code requires that advertisements for wireless service that promote a price for such service will provide disclosures of material terms of service, and that billing statements distinguish monthly charges for services and features from taxes, fees and other charges remitted to federal, state or local government. Finally, this voluntary industry code requires that wireless carriers provide ready access to toll-free customer service, a response, in writing, to state or federal administrative agencies within 30 days of receiving written consumer complaints from such an agency, and that they comply with all applicable federal and state laws regarding the privacy of customer information and publish their policy regarding the privacy of information collected online.

In large part, the AVC protection measures cover the same ground as those established by the CTIA Code, albeit in far greater detail.[15] We were of the preliminary view that the commitment by a wireless ETC to comply with the AVC would supplement the Commission's ability to monitor and enforce the obligations in the CTIA Code.

In reaching a decision on the appropriate consumer protections to require of wireless ETCs, we face the same conundrum discussed in Section IV of this order, namely, that wireless and wireline ETCs operate with different technologies, in a market that is in a different stage of development, and with different customer expectations and that the two industries use federal USF support for different reasons. Many of the consumer protections in Chapter 290 are required specifically because ILECs are the provider of last resort for telephone users in Maine.[16] Wireless ETCs are using USF funds to provide additional services in rural areas, not necessarily to provide last-resort service.[17] Consistent with that discussion, we will generally impose less strict consumer protections on wireless ETCs than on ILECs. In the final rule we impose requirements on wireless ETCs that ensure that customers may know what they are purchasing and are treated fairly, but omit requirements from Chapter 290 that are more relevant to providers of last resort.

In its comments in the Inquiry, TAM urges the Commission to require that each ETC be required to comply with all of the Chapter 290 and Chapter 294 consumer protection requirements as well as all Slamming and Cramming obligations and outage reporting requirements unless it is technologically impossible to do so. TAM argues that these protections ensure the goals of universal access to the telecommunications network. TAM argues that, if the consumer protection rules in Chapter 290 "have a meaningful benefit, then those benefits should be shared by all ETC customers rather than discriminating against customers based on their choice of technology when receiving telecommunications services." According to TAM, if wireless providers "want ratepayer money for the purpose of universal service, then they must truly comply with the rules, and the spirit of those rules, designed to promote universal

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[15] The Assurance of Voluntary Compliance can be found at http://www.maine.gov/ag/dynld/documents/Cingular_Wireless.pdf.

[16] "Provider-of-last-resort" refers to a telephone company that is required to offer basic service at Commission established rates to any customers who want service within its territory. The term and the concept developed after competitive carriers entered the telephone market. It allows regulators and carriers to discuss the approach to customers who cannot or do not wish to obtain the benefits of a competitive market.

[17] We do not have data to support a finding regarding the extent to which consumers use, or consider, wireless carriers as provider-of-last-resort service. We suspect that some customers of the wireless ETCs use wireless service as their sole telecommunications source and some do not. We expect that all customers are aware that ILEC service exists and is readily available, should their wireless service prove to be unsatisfactory.

service in Maine. This is not regulatory parity for parity's sake, but rather it is a clear policy goal to promote universal access to the telecommunications network." We disagree with TAM's fundamental premise that both ILECs and wireless ETCs should be viewed as offering universal service that is essentially similar. As we have discussed, ILECs remain providers of last resort for many customers while wireless and competitive ETCs do not. Providers of last resort should offer certain consumer protections that are not necessary to the needs or expectations of customers receiving the discretionary services that wireless ETCs provide.

The wireless ETCs comment that Chapter 290 would not further universal service, but "would saddle wireless carriers with a regulatory framework developed to protect consumers from monopoly practices by wireline carriers," contending that competition in the wireless market causes carriers to provide high-quality service to avoid losing customers. The wireless ETCs suggest that the Commission adopt, as an enforceable commitment for wireless ETCs in Maine, the CTIA Code. These providers also reject the notion that they should be bound by the terms of the AVC on the grounds that that agreement grew out of allegations regarding deceptive trade practices which were never asserted against RCC and U.S. Cellular. The wireless ETCs provide a chart comparing the CTIA Code and the AVC, with the aim displaying overlap and occasional inconsistency between those two sets of standards.[18]

Verizon suggests that wireless ETCs be required to adhere to the CTIA Code and the AVC, and that all CETCs should be required to adhere to the CTIA Code.

We disagree with the wireless ETCs' premise that the market will guarantee that carriers provide high-quality service. While we do not consider wireless ETC service to be provider-of-last-resort service, we nonetheless believe that the receipt of federal support should be accompanied by a more certain guarantee of consumer protection than we believe the market currently provides. However, as discussed below, we agree that adherence to the CTIA Code is sufficient to appropriately protect wireless ETCs' consumers from unexpected or unfair practices.

The OPA takes a balanced view by advocating that appropriate terms be extracted from each code – CTIA, AVC, and Chapter 290 – and combined (with some additional protections suggested in the comments) into a comprehensive consumer protection rule for wireless ETCs that is "comparable" to those required of ILECs.[19] The OPA identifies terms from Chapter 290 that it contends are equally

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[18] During the public hearing, we discussed the advantages of a nationwide standard for the wireless industry. Because a nationwide standard has not developed, the industry must expect that each state will develop its own standard.

[19] This approach is consistent with the OPA's comments in the Inquiry suggesting that the majority of the provisions of Chapter 290 are relevant to wireless service and the Commission should extend the applicability of those provisions to the service plans offered by a wireless ETC subject to specific waivers granted upon the demonstration (cont.)

relevant to wireless and wireline technologies. In choosing these terms, the OPA considers whether the terms will result in ETC designation as resulting in "a net public interest benefit." Thus, the OPA's basic premise – that wireless ETCs should be subject to appropriate but not necessarily identical consumer protection requirements - is consistent with our own.

With these goals in mind, we first considered the terms of Chapter 290, and the extent to which similar terms are included in the CTIA. We conclude that many of Chapter 290's terms are relevant to all telecommunications services. These terms are echoed in the CTIA in a manner that is relevant to the wireless industry, and for these terms we find that it is more effective to require compliance with the CTIA. Examples of such terms include billing disclosure requirements, advertising content requirements, and customer contact requirements. A second set of Chapter 290 terms duplicate terms present in state or federal law, and we find that their presence as law is adequate protection for consumers of wireless ETC service.[20] Examples include non-discrimination and unfair or deceptive practice requirements. A third set of terms are relevant only for providers of last resort. These terms include requirements to provide payment arrangements, advanced warning of disconnections, guaranteed reconnection, and emergency medical contingencies. As discussed earlier, we conclude that these requirements are not relevant to wireless ETCs because a consumer may turn to an ILEC if a payment arrangement or medical emergency exists or a disconnection has occurred. A fourth set of terms are unique to wireless providers and thus occur in the CTIA Code but not in Chapter 290. Examples are requirements to provide service area maps, to provide a 14-day trial period, and to disclose early termination fees. Finally, there are terms in Chapter 290 whose importance for all telephone customers could be a matter of disagreement. For example, deposit rules could be considered necessary for all telecommunications customers, or could be considered necessary only for customers of a provider of last resort. In these circumstances, we find that relying on the CTIA, and thus eliminating these Chapter 290 requirements, is adequate to protect wireless customers from unexpected or unfair practices.

We then compared the terms of the CTIA and the AVC to determine if the final rule should require a wireless ETC to comply with both standards as did the proposed rule. The wireless ETCs comment that the CTIA Code largely overlaps the truth-in-billing laws and the AVC, making imposition of the AVC unnecessary. They also note that in some instances, the AVC conflicts with the CTIA Code, making carrier compliance and Commission CAD decisions difficult and potentially impossible. We do not find significant disagreement between the two codes, and we find that any benefit of increased detail in the AVC standards does not make up for the difficulty of interpreting two separate and potentially conflicting standards. Thus,

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by a carrier that application of a particular provision of Chapter 290 would not be in the public interest.

[20] A consumer may be required to take court action to enforce such requirements.

the final rule requires that wireless ETCs comply with the CTIA Codes but removes reference to compliance with the AVC.[21]

We make a last comment regarding the OPA's suggestion that we develop a new rule or rules that contain protections appropriate for wireless ETCs and TAM's suggestion that we re-examine Chapter 290 to determine if some portions are unnecessary for all carriers. We agree that over time we should review all our consumer protection standards as technologies and markets change. However, using rules and standards that exist now is the most efficient way to conclude this topic at this time.

Finally, we note that Section 18 of Chapter 290 establishes the procedures by which the Commission's Consumer Assistance Division (CAD) to assist in resolving complaints lodged by a customer against its telecommunications. The CAD currently resolves complaints by customers of the two wireless ETCs, and comments in our rulemaking do not suggest that any stakeholder expected that process to change.[22] To make it clear that the CAD has the authority to resolve wireless ETC complaints, we have added Section 5(E) to the final rule.

8. Local Service (Section 3(H))

Section 3(H)(1)(a) of our proposed rule adopted the FCC's recommendation, as set forth in its ETC Order, that a provider that is not an ILEC be required to submit with its application information demonstrating that it offers and advertises a local usage plan that is comparable to the one offered by the ILEC in the service areas for which it seeks designation as an ETC. Our proposed rule allowed an applicant to comply with this requirement by designing a "qualifying plan" and submitting evidence demonstrating that the plan is comparable to the ILEC's local usage plan.

We also considered whether more specific requirements should be imposed. In so doing, we considered the significantly disparate points of view expressed during the Inquiry. For example, TAM suggested that wireless ETCs can satisfy the local usage requirement only if they establish a plan that provides for unlimited incoming and outgoing local calling within a defined basic service calling area at a rate comparable to the current average residential rate for basic service in Maine. The OPA observed that very few wireless carriers distinguish between local and toll minutes and thus we should focus on whether a wireless ETC's "qualifying plan provides a certain number of minutes for an affordable price so that the plan might represent an appropriate substitution for basic telephone service." The OPA also suggested that we develop a standard local usage plan for wireless service that would

[21] In balancing the requirements for wireline and wireless carriers, we note that the CTIA contains some terms that exceed those of Chapter 290. Examples include the requirement to offer a 14-day trial period and to provide coverage maps to customers.

[22] Discussion at the public hearing focused on the benefits of CAD consumer enforcement authority.

represent a "safe harbor" for wireless carriers seeking ETC designation. The wireless ETCs argued during the Inquiry that the Commission should not establish a local usage requirement for wireless ETCs because any Commission-imposed minimum local usage requirement would be tantamount to an attempt by the State of Maine to regulate wireless rates in violation of the TelAct[23] and because any requirement that wireless ETCs offer a flat-rate unlimited service plan would violate principles of competitive neutrality unless wireline LECs were required to offer at least one rate plan that is comparable to rate plans offered by wireless carriers operating in their service areas. They contended that "as long as an ETC is offering consumers a variety of local usage options, it is meeting its obligation to offer local usage."

When developing the proposed rule, we also considered the existing comparable plans that we had approved for RCC and U.S. Cellular. RCC currently offers two plans that are reasonable to compare with ILECs' basic local service offerings – one includes unrestricted calling minutes within and outside the state, while the other offers a minimal number of minutes for a reduced monthly price. U.S. Cellular provides a plan that provides a modest number of minutes for a fixed price that is reasonably close to ILECs' basic local service prices.

We continue to hold the view, stated in the Notice of Rulemaking, that the interests of universal service do not require that a wireless ETC restructure its offerings so as to include an unlimited local calling plan at a rate similar to that provided by an ILEC, but nonetheless that the concept of basic service is relevant in evaluating a wireless carrier's service obligations. We also recognize that our prior efforts to determine whether a wireless calling plan was comparable to an ILEC's wireline plan were complex and time consuming given the vastly different business models on which these two types of telecommunications service are based. When making such a comparison, we must balance countless features that offer advantages to one but not the other industry's service. For example, one can weigh the benefits of limited minutes of both local and long distance calls with the benefits of unlimited minutes of only local calls. Other considerations would be the disadvantages of contracts and termination fees balanced against the disadvantages of costly handsets.

Section 3(H) of the proposed rule offered two alternatives by which an ETC might satisfy the requirement to offer a plan comparable to the one offered by the ILEC in the ETC's designated territory. Section 3(H)(1)(a)[24] allowed a case-by-case

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[23] 47 U.S.C. § 332(c)(3) provides that "no State or local government shall have any authority to regulate the entry of or rates charged by any commercial mobile service." According to RCC and U.S. Cellular, the FCC's statement in its ETC Order – that "there is nothing in the Act, Commission's rules, or orders that would limit state commissions from prescribing some amount of local usage as a condition of ETC status" – is incorrect because such action is plainly prohibited by section 332(c)(3). *See* FCC ETC Order at ¶ 34.

[24] Section 3(H)(1)(a) is changed to Section 3(H)(1) in the final rule. Section 3(H)(1)(b) is changed to Section 3(H)(2).

approach which, while possibly engendering complex and difficult proceedings, had the virtue of providing the opportunity for regulatory flexibility. Section 3(H)(1)(b) allowed a "safe harbor" provision that established an irrebutable presumption of comparability upon the certification by a wireless provider that it offers and advertises a plan providing not less than 300 minutes of local calling area usage at a monthly cost of not more than $25 and that customers may terminate their service under such a plan at any time without penalty. We observed in our Notice of Rulemaking that offering a safe harbor would navigate between the unwelcoming shores of state commission involvement in setting rates for wireless service, and the uncertainty of outcome associated with a fact specific adjudicatory review of the comparability issue.

In their comments, the wireless ETCs reiterate their observation that wireless service should not be compared to ILEC basic service, because consumers choose wireless service for features that wireline service does not have. They contend that the Commission should evaluate competitive ETCs' rate plans on a case-by-case basis, using the FCC's guidelines. They do not object to establishing a rebuttable presumption of comparability, but state that the rule should include in the presumption the rate plans established by U.S. Cellular and RCC in the stipulations approving their ETC status. They point out that it would be burdensome for them to implement a new rate plan at this time. In a second set of comments, the wireless ETCs reiterate their assertion that establishing a safe harbor that is tied to a specific usage and rate level would constitute rate regulation and is therefore prohibited by FCC regulation.[25]

In contrast, TAM states that the rule should contain a more stringent safe harbor, and that the plan approved in the stipulation approving RCC's ETC status is closer to being appropriate. TAM contends that "if the goal is truly to expand the reach of the network and create a competitive option for customers, rather than simply providing federal money to support a duplicative network that has no revenue regulation, then the Commission must require a local usage plan that approximates the ability of a customer to have a local area for which all incoming calls are free and for which all calls within a specified area are also free," priced comparably to the local ILEC service. The OPA, while supporting a safe harbor, also recommends that the safe harbor more closely resemble local ILEC usage plans by including unlimited local usage and prohibiting a termination fee, and recommends a price that does not exceed $30.[26]

We agree with TAM's statement that establishment of a safe harbor does not constitute rate regulation as prohibited by the FCC. Requiring some degree of

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[25] In the Public Hearing, wireless ETCs commented that wireless carriers could meet the requirements by offering a variety of rate plans (e.g., one plan could offer very few local minutes at a very low price, while another could offer more minutes at a higher price). We agree that offering differing plans could satisfy the differing local needs of consumers and will consider such an approach on a case by case basis.

[26] The price for ILEC local service ranges generally between $19 and $29.

rate comparability is inherent in the FCC's adoption of a local usage requirement. Moreover, establishing a safe harbor does not *require* a wireless ETC to charge that rate, it simply *allows* it.

The wireless ETCs also comment that any safe harbor must exclude prohibitions on early termination fees, which "allow wireless consumers to receive steeply discounted handsets and allow carriers to defray the substantial costs of customer acquisition." Commenters brought to our attention a series of actions related to termination fees that took place in Kansas, bringing to light the emerging responses to such issues nationwide. We note that in approving RCC's current plan, we found that reasonably priced equipment was an important component of an acceptable plan. The OPA argues against allowing termination fees in the safe harbor or any other qualifying plan. In our view, the role that the termination fee plays in keeping the price of the handset at a modest level is such an important part of wireless plans that we will continue to allow a termination fee as part of the safe harbor set forth in the final rule.

Our conundrum continues to be how to judge a "comparable usage plan" between two services (wireline and wireless) that have inherently different technology requirements, market conditions, and customer expectations. Requiring a wireless carrier to offer the precise features contained in ILEC basic service is not realistic or useful. "Comparable" does not mean "identical," and we do not intend to require an identical offering. We retain Section 3(H)(1), that allows us to judge comparability on a case-by-case basis. However, we find that removal of the safe harbor would deprive wireless ETCs of the ability to structure their local usage offering in a way likely to meet our tangible view of what is "comparable." Thus, we retain the safe harbor in the final rule but revise its terms to reflect our balance of features and price.

Finally, we are concerned that customers currently taking service under those plans would be unnecessarily disrupted if our rule requires or results in a significant change to the comparable plans. A significant number of customers receive service under RCC's "Community Connections Plan" and many of those are Lifeline customers. We would regret "pulling the rug out from under" those customers. However, we find that this rule should establish a reasonable safe harbor, not simply memorialize plans that already exist.

As we balance competing features in wireless carriers' plans, it is our view that RCC's Community Connections Plan is a reasonable substitute for basic local service. Accordingly, in the final rule, we revise the safe harbor to be a plan that (1) charges a rate no greater than $35, (2) includes unlimited minutes, and (3) charges no termination fee or, alternatively, charges a termination fee only if the customer is provided a handset at a price not greater than $35. It is our understanding that RCC already conforms to this safe harbor and U.S. Cellular does not.[27] However, each

[27] Note that, in this order, we do not make any finding that U.S. Cellular's plan is or is not comparable to those offered by the similarly placed ILECs under the standards of Section 3(H)(1).

wireless ETCs must file its current (or another) plan with a showing that it conforms to the terms of Section 3(H). We will make our finding of comparability in response to that filing.

9. Equal Access (Section 3(I))

In developing the proposed rule, we considered whether we should impose through this rulemaking any additional requirements associated with equal access. For example, TAM suggested in its comments in the Inquiry and incorporated here, that equal access should be available through all ETCs, especially in those situations in which a CETC is the only ETC within a service area.

Section 3(I) of the proposed rule simply adopted the FCC's recommendation that applicants acknowledge that they may be required to provide equal access if all other ETCs in that service area relinquish their designations as ETCs. We were not inclined to make any additional findings regarding open access. No commenter to the rulemaking further disputed this section and it remains unchanged in the final rule.

D. Commission Approval of Petitions (Section 4)

Section 4 of the proposed rule adopted the general standards, as recommended by the FCC in its ETC Order, to be applied by the Commission in reviewing applications for ETC designation. Section 4(A)(1)[28] of the proposed rule adopted as our own the factors that the FCC, in its ETC Order, recommends that we consider in making a public interest determination. The provision required that the Commission approve the application if it meets all of the requirements of the rule and if designation of the provider as an ETC would both advance some or all of the purposes of universal service as set forth in the Telecommunications Act of 1996, 47 U.S.C. § 254 and be in the public interest.

In our prior orders designating wireless carriers as ETCs, we stated that the public interest concept was a broad one, with one consideration being that rural customers should enjoy the same choices in telecommunications services as urban customers, including access to broadband service through wireless devices. In those proceedings, we declined to specifically consider whether the designation of a wireless carrier in areas served by rural ILECs would exacerbate problems with the growing size of the federal USF. We found that expanding the availability of wireless service was in the public interest, and that it was the FCC's responsibility to establish rules for the availability and use of federal USF support. In this regard, we agreed with comments made by the OPA and the wireless ETCs in the Inquiry that the FCC's analysis presumes that the public will generally benefit from the availability of a new competitive choice or the addition of a previously unavailable service. The wireless ETCs further stated that ETC designation may serve the public interest by providing a choice of

[28] Changed to section 4(A) in the final rule.

service offerings in rural and high-cost areas, and that the public interest may also be advanced through the mobility which expanded and improved wireless service allows in geographically isolated areas, as well as through the availability of services comparable to those provided in urban areas such as voicemail, numeric paging, call forwarding, three-way calling, call waiting, and other premium services.

In contrast, TAM stated in comments made in the Inquiry, that the public interest test is satisfied only if CETCs are required to abide by the same customer protection rules as incumbent ETCs, offer unlimited local use packages, allow for equal access, and utilize USF funding for universal goals. As discussed in Section IV of this order, we do not agree with TAM.

Rather, we continue to find that, as a general rule, advancing consumer choice and availability are in the public interest and that the need to expand choice and availability are most pressing in rural areas of Maine. We will decide on a case-by-case basis whether choice and availability would be attained by a CETC's infrastructure plan, and we will do so by considering the locations of proposed improvements and our general knowledge of the needs of the state.

The OPA feels that the "public interest" test is really an examination of whether there exist any adverse impacts to the designation which outweigh the public benefit, and that the primary potential adverse impact is cream-skimming. Section 4(A)(2)(b)[29] of the proposed rule required that, where an applicant seeks designation in an area below the study area level of a rural telephone company, we would conduct a cream-skimming analysis to ensure that the applicant is not seeking to use USF support to expand service in a manner that favors its low-cost areas. Commenters provided no suggestions as to how our analysis would be carried out, and we will consider methodologies on a case-by-case basis.

We find that our consideration of the public interest will likely include many factors, some discussed here and some arising in the future. With this in mind, we have revised Section 4(B) to allow, rather than require, that we consider the specific issues delineated in the rule. We retain the term, now in Section 4(C) that further allows us to consider other factors.

We continue to agree with the FCC's statement in its ETC Order that concerns about the size of the fund are beyond the scope of the public interest test for certification of ETCs and should, instead, be addressed at the national level, by the Joint Board, the FCC, and by Congress. No commenters disagree with this finding during the rulemaking. Accordingly, the final rule does not require that the sustainability of the fund be a factor in our public interest analysis.

[29] Changed to section 4(B)(2) in the final rule.

E. Annual Certification of ETCs (Section 5)

Section 5 of the proposed rule established the annual procedures for a provider that has already been designated as an ETC to request re-certification by the Commission to the FCC. Annual petitions for such certification, which must include a statement that the provider will use federal high-cost universal service support only for the provision, maintenance, and upgrading of the facilities and services for which the support is intended, would be signed by an officer of the provider and filed with the Commission by July 31 of each year. No commenters objected to this section and it remains unchanged in the final rule except for a change made necessary by our differing treatment (discussed throughout this Order) of CETCs and ILECs.

In the final rule we added Section 5(B), which establishes the standard the Commission shall use when determining whether to approve annual re-certification of a CETC to the FCC. The new section mirrors the language of Section 4(A)(1), which dictates the standard for approving initial applications, thereby explicitly stating the logical use the Commission will make of the annual reports and certification letter. Under Section 5(B), annual re-certification will be granted by the Commission if the petitioning CETC meets the requirements of the rule and has carried out its investment plan to the greatest extent possible, the designation will advance the purposes of universal service found in federal law, and the designation is in the public interest.

Because the annual filing requirements of the final rule (discussed in the next section of this Order) apply only to CETCs, we add Section 5(C) to explicitly state that we will approve annual re-certification of ILECs annually. The provision explicitly allows us to investigate any concerns we may have.

Section 5(B)[30] of the proposed rule required that any ETC seeking to relinquish its designation as an ETC for an area that is served by more than one ETC file a petition for relinquishment not less than 9 months prior to the date of the proposed relinquishment. We commented that this filing deadline is necessary to enable the Commission to conduct such proceedings and take such ameliorative action as is required by the Telecommunications Act of 1996, 47 U.S.C. § 214(e)(4). No commenters objected to this term and it remains unchanged in the final rule except for the ubiquitous change making the term applicable to only CETCs.

The OPA comments that the rule contains no consequence, other than denial or revocation of ETC status, if an ETC fails to accomplish its build-out plan. It is the OPA's view that an ETC should be held accountable for its actions through some consequence short of denial (e.g., through financial penalties), which the OPA comments would harm the State's interest in wireless expansion in rural areas. The OPA suggests a collaborative process to develop a reasonable consequence. We agree that a wireless ETC should be expected to accomplish its plan to the greatest extent practicable. However, the wireless ETCs have commented that a variety of

[30] Changed to section 5(D) in the final rule.

factors change quickly in their industry, and even a 2-year plan is speculative at best. As stated elsewhere in this order, our own experience has shown this to be true. Thus, we are hesitant to try to pre-determine when a company should be penalized and when it should not. Our experience so far has been that wireless ETCs are relatively successful in meeting their own filed expectations. We expect that we and the OPA will observe the success that wireless ETCs have in the future, and revisit the need for consequences if it becomes necessary to do so. We note that we have no qualms about denying ETC certification if necessary, unfortunate as this outcome would be.

F. Annual Reports (Section 6)

Section 6 of the proposed rule established the annual reporting requirements for all ETCs. The reports, to be filed not later than July 31 of each year, would require certifications and reporting of activities related to the State of Maine in the previous year through June 30, and would be signed by an officer of the company. These requirements are both ministerial (in terms of what must be included in the actual annual report) and substantive (in that they establish the obligations and commitments that a provider must make, on an annual basis, in order to continue to be designated as an ETC.)

As discussed in Section IV of this order, TAM comments that its members are rate-of-return regulated, with reporting requirements adequate to ensure that carriers are using USF funds appropriately, and recommends that the entire rule should be applicable only to CETCs. TAM suggests that the rule should not apply to ILECs and Verizon suggests that annual reports are "needless and superfluous" because the Commission already has sufficient opportunity to be made aware of an ILEC's actions as they relate to most of the items required by the annual report. Verizon points out that items in the annual reports related to the use made of federal USF funds are inappropriate because Verizon passes all this funding directly to its ratepayers through rebates on bills. TAM comments that its USF funding is used to ensure universal service at reasonably comparable rates, making reporting on its build out plans irrelevant.

We agree with TAM and Verizon. The annual reporting requirements encompass two overall topics. First, they require an accounting of the use the ETC makes of USF funds. As discussed in TAM's and Verizon's comments, all ILECs have generally completed build out, and do not use USF funds for this purpose. Thus, annual reporting of USF funds' use is irrelevant for ILECs.

Second, the annual reports include information that allows the Commission to ascertain that ETCs are following certain safety, reporting, and consumer protection requirements to which they are subject. The Commission's rules and orders and its investigatory authority contain reporting requirements for ILECs that are sufficient to ensure that we may recognize insufficient compliance in these areas. Additional annual reporting is not necessary.

For these reasons, and consistent with our intention to eliminate requirements that are not useful or relevant, the final rule has been revised to require only CLECs to provide the annual report required in Section 6.

The proposed rule contained ten requirements for the Annual Report. We discuss each below.

1 . Use of Federal High Cost Universal Service Funds by Non-ILECs (Section 6(A))

Section 6(A) of the proposed rule required that an ETC that is not an ILEC provide a description of investments made and expenses paid with USF support. With the exception of TAM's and Verizon's comments discussed earlier, no commenters objected to this section and the requirement remains unchanged in the final rule.[31]

2. Failure to Provide Service (Section 6(B))

Section 6(B) of the proposed rule required that an ETC provide detailed information on the number of requests for service from applicants within its designated service area that were unfulfilled for the reporting period, and to describe in detail why the request for service could not be fulfilled and what steps where taken to attempt to provide such service. No commenters objected to this section and it remains unchanged in the final rule

3. Customer Complaints (Section 6(C))

Section 6(C) of the proposed rule required that an ETC report the number of complaints per one thousand customers, that it provide separate totals for the number of complaints that customers made to the FCC and to the Commission's Consumer Assistance Division (CAD), that it describe the nature of the complaints and their outcome.

The wireless ETCs suggested revisions to this section that they believe would clarify without changing the substance of the section. We have made the revision in the final rule. In response to these comments, we also removed the unnecessary requirement that the complaints be reported "per one thousand customers."

[31] Throughout this section of the order, we note that the final rule remains unchanged from the proposed rule. However, each reference to "ETC" is changed to "CETC" as discussed in the paragraphs introducing Section 6. In addition, commenters often commented on the topic of the subsection, but the comments and our discussion occur when discussing Section 3 of the rule.

4. Compliance with Applicable Consumer Standards (Section 6(D))

Section 6(D) of the proposed rule required that an ETC certify that it met the consumer standards as required by Section 3(G)(1) of the proposed rule. No commenters objected to this section and it remains unchanged in the final rule.

5. Ability to Function in Emergency Situations (Section 6(E))

Section 6(E) of the proposed rule required that an ETC certify that it had the ability to function in emergency situations based on continued adherence to the standards set forth in Section 3(F)(1) of the proposed rule and that it complied with the Commission's Chapter 200 outage reporting requirements as required by Section 3(F)(2) of the proposed rule. We revise this term of the final rule to maintain consistency with Section 3(F).

6. Advertising Certification (Section 6(F))

Section 6(F) of the proposed rule required that an ETC certify that it has publicized the availability of its applicable telephone assistance programs, such as Lifeline and Link-Up, as required by Section 3(D) of the proposed rules. No commenters objected to this section and it remains unchanged in the final rule.

7. Qualifying Local Service Plan

Section 6(G) of the proposed rule required that an ETC report the total number of subscribers to its qualifying local plan(s) offered pursuant to the requirements of Section 3(H) of the proposed rule. Section 6(G) also required that an ETC describe all advertisements for such local plan(s) and that it certify that, in light of current market conditions, such plan(s) remain comparable to the one offered by the incumbent local exchange carrier in the service areas in the ETC's designated service area.

The wireless ETCs reiterated their comments, discussed in Section V(C)(8) of this order, that plans approved in the stipulations granting ETC status to RCC and U.S. Cellular should constitute acceptable qualifying local plans for the purpose of complying with Section 3(H) of this Chapter. Changes we have made to Section 3(H) in the final rule do not necessitate changes to Section 6(G), and it is unchanged in the final rule.

8. Planned Use of Federal High Cost Universal Service Support (Section 6(H))

Section 6(H) of the proposed rule requires that an ETC report its planned use, investment, and expenses of USF support related to the State of Maine to be received during the period from October 1 of the current year through the following September. No commenters objected to this section and it remains unchanged in the final rule. However, Section 6(H)(1) is relevant to ILECs and thus we have removed it. Section 6(H)(2) (now Section 6(H)) is relevant to CETCs, and remains unchanged.

9. Updated Two-Year Infrastructure Improvement Plan (Section 6(I))

Section 6(I) of the proposed rule required that an ETC submit an updated two-year plan containing all of the information required pursuant to Section 3(C) of the proposed rule. No commenters objected to this section and it remains unchanged in the final rule.

10. Updated Wireless Build-Out and Coverage Maps (Section 6(J))

Section 6(J) of the proposed rule required that a wireless ETC update the infrastructure information data and map required pursuant to Section 3(E) of the proposed rule. No commenters objected to this section and it remains unchanged in the final rule.

11. Additional Information (Section 6(K))

Consistent with our addition of Section 3(J), we have added Section 6(K) to the final rule, to explicitly allow us to obtain additional information that will help us reach our decision regarding re-certification.

F. Applicability to Providers Designated as ETCs Prior to the Effective Date of this Chapter (Section 7)

Section 7 of the proposed rule required that an ETC which was designated as such prior to the effective date of these proposed rules submit the annual report and certifications required by Section 5 beginning in July, 2008, and thereafter that its annual reports comply with the requirements of Section 6 of the proposed rules. No commenters objected to this section and it remains unchanged in the final rule.

G. Waiver (Section 8)

Section 8 of the proposed rule set forth the procedure by which any person subject to the proposed rules may seek a waiver of any requirement of the rule that is not a requirement imposed by statute. No commenters objected to this section and it remains unchanged in the final rule.

Accordingly we

ORDER

1. That the attached rule, Chapter 206 – Requirements for Eligible Telecommunications Carriers, is hereby adopted;

2. That the Administrative Director shall file the provisionally adopted rule and related materials with the Secretary of State; and

3. That the Administrative Director shall notify the following of this Order:

a. All persons who commented in this rulemaking;

b. All telecommunications carriers in Maine; and

b. All persons who have filed with the Commission within the past year a written request for Notice of Rulemaking.

Dated at Augusta, Maine, this 20th day of November, 2007.

BY ORDER OF THE COMMISSION

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Karen Geraghty
Administrative Director

COMMISSIONERS VOTING FOR: Adams
Reishus
Vafiades